REGISTERED No. M. 7463.

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol VI] Trivandrum, Friday 22nd December 1961 / 1st Pausa 1883 [No. 146

NOTIFICATION

No. 4630-LA. 1/61. *22nd December 1961.*

In exercise of the powers conferred by sub clause (a) of Clause 2 of Article 174 of the Constitution of India, as amended, the Governor of the State of Kerala hereby prorogues the Third Session in 1961 of the Kerala Legislative Assembly with effect from the 22nd December 1961.

ഭേദഗതി വരുത്തപ്പെട്ട ഇൻഡ്യൻ ഭരണഘടന 174-ാംവകുപ്പ് 2-ാം ഖണ്ഡം (എ) ഉപഖണ്ഡപ്രകാരം നൽകപ്പെട്ട അധികാരങ്ങൾ വിനിയോഗിച്ച് കേരള സംസ്ഥാന ഗവർണർ കേരള നിയമസഭയുടെ 1961 ലെ മൂന്നാം സമ്മേളനം 1961 ഡിസംബർ 22-ാം തീയതി മുതൽ ഇതിനാൽ സമാപിപ്പിച്ചിരിക്കുന്നു.

By order of the Governor,

D. TIRUMALAI,
Secretary,
Legislative Assembly.

Legislature Secretariat,
Trivandrum.

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM 1961.

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KERALA GAZETTE
EXTRAORDINARY
PUBLISHED BY AUTHORITY

Vol. VI] Trivandrum, Friday, 22nd December 1961 / 1st Pausa 1883 [No. 147

GOVERNMENT OF KERALA

Law Department

NOTIFICATION

No. 370H2|61|Law.

Dated, Trivandrum, the 22nd December, 1961.|
Pausa 1, 1883 (Saka)

The following Act of the Kerala State Legislature is hereby published for general information. The Bill as passed by the Legislative Assembly received the assent of the Governor on the 20th day of December, 1961.

By order of the Governor,
P. SANKARAN ELAYATH,
Law Secretary.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1961.

ACT 37 OF 1961

THE KERALA SURVEY AND BOUNDARIES ACT, 1961

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ACT 37 OF 1961

THE KERALA SURVEY AND BOUNDARIES ACT, 1961

An Act to consolidate, amend and unify the law relating to the survey of lands and settlement of boundary disputes in the State of Kerala.

Preamble.—WHEREAS it is expedient to consolidate, amend and unify the law relating to the survey of lands and settlement of boundary disputes in the State of Kerala;

BE it enacted in the Twelfth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Survey and Boundaries Act, 1961.

(2) It extends to the whole of the State of Kerala and shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(i) "Collector" means the Collector of the district, having jurisdiction over the area;

(ii) "Government land" means any land the proprietary right in which vests in the Government;

(iii) "prescribed" means prescribed by rules made by the Government under this Act;

(iv) "registered holder of any land" means the person in whose name the land in question is registered in the Government accounts of the village.

Explanation (1).—When any person other than the registered holder is in lawful management of a land, otherwise than as agent or servant of the registered holder or as mortgagee, such person shall be deemed to be the registered holder in respect of such land.

Explanation (2).—When a land is so registered in the names of two or more persons jointly, the registered holder shall, for the purposes of this Act, be the person who is recognised by the other joint holder or joint holders as the manager of the land or who, in the case of dispute, is recognised by the Collector as the principal joint holder;

(v) "registered land" means any land the proprietary right in which does not vest in the Government;

(vi) "survey" includes all operations incidental to the determination, measurement and record of a boundary or boundaries or any part of a boundary and includes a resurvey;

(vii) "survey mark" means any mark or object, erected, made, employed or specified by a Survey Officer to indicate or determine or assist in determining the position or level of any point or points;

(viii) "Survey Officer" means any officer appointed by the Government as a Survey Officer under section 3;

(ix) "Village Official" includes Village Officer, Village Assistant, Adhikari, Menon, Potail and Shanbogue.

3. *Appointment of Survey Officers.*—(1) The Government may, by notification in the Gazette, appoint any officer either by name or by virtue of his office to be a Survey Officer for all or any of the purposes of this Act.

(2) Subject to the control of the Government and of any other officer or authority appointed by the Government in this behalf, every officer appointed as Survey Officer shall exercise the powers and perform the duties of a Survey Officer within such local limits as the Government may, from time to time direct.

(3) The Government may, by order, direct that the powers exercisable by them under sub-sections (1) and (2) may also be exercised by such officer or authority, subject to such conditions as may be specified by them in this behalf.

CHAPTER II

SURVEY OF LANDS

4. *Government may direct the survey of any land or any boundary of any land.*—The Government or, subject to the control of the Government, any officer or authority authorised by the Government in this behalf, may, by notification in the Gazette, order the survey of any land or of any boundary of any land or of the boundary forming the common limit of any Government land and any registered land.

5. *Survey of lands hit by sea erosion or action of river.*—The registered holder of any land may apply to the Government or to any officer or authority authorised by the Government in this behalf for the survey of his land on the ground that a portion of the land has been lost by sea erosion or action of river; and thereupon the Government or such officer or authority, as the case may be, may order the survey of the land.

6. *Notification to be published by Survey Officers.*—(1) When any survey is ordered under section 4 or section 5, the Survey Officer shall publish a notification in the Gazette in the prescribed manner inviting all persons having any interest in the land or in the boundaries of which the survey has been ordered, to attend either in person or by agent at a specified place and time and from time to time thereafter when called upon for the purpose of pointing out boundaries and supplying information in connection therewith. A copy of such notification shall also be served on the registered holder or registered holders of the land in respect of which the survey has been ordered.

(2) A notification published under sub-section (1) shall be held to be a valid notice to any person (other than the registered holder) having any interest in the land or in the boundaries of which the survey has been ordered.

(3) Such notification shall further require every person, whether a registered holder or not, having interest in the land or in the boundaries of which the survey has been ordered—

(a) to clear within a specified period by cutting down or removing any trees, jungle, fences, standing crops or other material obstructions, the boundaries or other lines, the clearance of which may be necessary for the purpose of the survey;

(b) to provide labour at such times and for such periods as may, from time to time, be required by furnishing flag-holders and chainmen; and

(c) to provide suitable survey marks and otherwise to give such assistance in the survey as may be demanded under this Act or the rules made thereunder.

(4) If any person fails to comply with any requisition of a Survey Officer made under clause (a), clause (b) or clause (c) of sub-section (3), the Survey Officer may himself employ hired labour for the purposes of survey.

(5) The cost of the labour employed and of the survey marks used in such cases shall be determined and apportioned in the prescribed manner among the persons who have any interest in the land or in the boundaries of which the survey has been ordered, and shall be recoverable from such persons as an arrear of land revenue. Notice of such determination and apportionment shall be given in the prescribed manner to the persons aforesaid

7. *Cost of survey operations may be defrayed in the first instance by Government in certain cases.*—Notwithstanding anything contained in sub-sections (3), (4) and (5) of section 6, whenever it may appear to the Survey Officer to be desirable that the cost of all or any of the operations prescribed in clauses (a), (b) and (c) of sub-section (3) of section 6 shall be defrayed in the first instance by the Government, he may, with the previous sanction of the Government, in lieu of the notification prescribed in sub-section (3) of section 6, issue a notification that such cost shall be defrayed in the first instance by the Government and may thereupon proceed with the survey of the land and apportion and charge such cost in the manner prescribed under sub-section (5) of section 6:

Provided that the cost of the operations in connection with the survey carried out in accordance with the orders passed under section 5 shall, in the first instance, be borne by the Government and shall be charged and recovered from the applicant in case it is found on survey that no land was lost by sea erosion or action of river, and in other cases such cost shall not be recovered.

8. *Survey to be carried out in the prescribed manner.*—Every Survey Officer shall be bound to carry out the survey in the manner prescribed.

9. *Power to record boundary as undisputed.*—(1) The Survey Officer shall have power to determine and record as undisputed any boundary in respect of which no dispute is brought to his notice.

(2) Notice of every decision of the Survey Officer under sub-section (1) shall be given in the prescribed manner to the registered holders of the lands, the boundaries of which may be affected by the decision.

10. *Power of Survey Officer to determine and record a disputed boundary with reasons.*—(1) Where a boundary is disputed, the Survey Officer shall, after making such inquiries as he considers necessary, determine the boundary and record it in accordance with his decision with reasons in writing for arriving at that decision.

(2) Notice of every decision of the Survey Officer under sub-section (1) shall be given in the prescribed manner to the parties to the dispute and other registered holders of the lands the boundaries of which may be affected by the decision.

11. *Appeal against orders of Survey Officer.*—(1) Any person aggrieved by a decision under section 6, section 7, section 9 or section 10 may appeal to such authority as may be prescribed. The appellate authority shall record the reasons

for the decision in writing and shall give notice of such decision in the prescribed manner to the parties to the appeal. Any modification of the Survey Officer's decision ordered by the appellate authority shall be noted in the record prepared under section 9 or section 10, as the case may be.

(2) A copy of the order and a copy of the map recording the boundaries as determined under section 9, section 10 or sub-section (1) of this section shall be furnished to any person interested in such order or map, as the case may be, on his application and payment of such cost as may be prescribed.

12. *Period within which appeal may be preferred.*—(1) An appeal under section 11 shall be preferred within three months from the date of service of notice under section 6, section 9 or section 10, provided that the time taken to obtain a copy of the decision and of the map shall not be included in the period of three months allowed for the appeal.

(2) No appeal, after the expiry of the said period, shall be admitted unless for reasons to be recorded in writing the appellate authority is satisfied that the appellant had good and sufficient cause for not preferring the appeal within such period.

Explanation.—The fact that notice under section 6, section 9 or section 10 was not served in the prescribed manner on the appellant shall be deemed to be good and sufficient cause.

(3) No appeal shall be admitted under sub-section (2) after the issue of the notification specified in section 13.

13. *Completion of demarcation to be notified.*—When the survey of any land or boundary which has been notified under section 4 or ordered under section 5 has been completed in accordance with the orders passed under section 9, section 10 or section 11, the Survey Officer shall notify the fact in the Gazette, and a copy of such notification shall be posted in the village office, if any, of the village to which the survey relates. Unless the survey so notified is modified by a decree of a civil court under the provisions of section 14, the record of the survey shall be conclusive proof that the boundaries determined and recorded therein have been correctly determined and recorded.

14. *Right to institute a suit in respect of boundary of the property surveyed.*—(1) Any person deeming himself aggrieved by the determination of any boundary under section 9, section 10 or section 11 may, subject to the provisions of the law of limitation in force for the time being, institute a suit within one year from the date of the notification under section 13 to set aside or modify the said determination and the survey shall, if necessary, be altered in accordance with the final decree in the suit and the alteration, if any, shall be noted in the records.

(2) In any suit under sub-section (1), the plaintiff shall join as parties to the suit all persons whom he has reason to believe to be interested in the boundary which is subject to the suit.

15. *Liability of registered holders for maintenance of survey marks.*—(1) Subject to such conditions as may be prescribed in this behalf, every registered holder of land shall be bound to maintain, renew and repair the survey marks on or within the boundaries of his holding, and, in default of his doing so, the Survey Officer, the Collector or any of the subordinates of such officers may, at the cost of the Government, maintain, renew and repair such survey marks, determine and apportion the cost of so doing, give notice of such determination and apportionment to the parties concerned and recover such cost as an arrear of public revenue due on land. Such cost may include the cost of all operations incidental to such maintenance, renewal or repair.

(2) Before a Survey Officer or Collector or any of the subordinates of such officers attends to the maintenance, renewal or repair of any survey mark under sub-section (1), he shall serve a notice in writing on the registered holder in the prescribed manner giving particulars of the survey marks in respect of which default has been committed and calling upon him to maintain, renew or repair the same within a time to be specified in such notice which shall not be less than fifteen days from the date of service thereof. If a notice under this sub-section cannot be served personally on the registered holder a copy of the same shall be served on the person in possession of the land or other person interested in the land.

16. *Imposing of charges and appeals.*—(1) Every order of a Survey Officer or Collector or the subordinates of such officers imposing charges under sub-section (1) of section 15 shall be recorded in writing and a copy of the order shall be supplied to the parties on their application and on payment of such cost as may be prescribed.

(2) The order of the Survey Officer, Collector or the subordinates of such officers shall be final, if no appeal is preferred, and in the event of an appeal being preferred, the decision of the appellate authority shall be final.

(3) Any person deeming himself aggrieved by any order passed under sub-section (1) may appeal to such authority as may be prescribed, within two months of the date of service of such order.

17. *Duties of Village Official.*—It shall be the duty of every Village Official—

(a) to prevent the destruction, injury, removal or alteration of any survey mark on or within the limits of his jurisdiction; and

(b) when he becomes aware that any such mark has been destroyed, injured, removed or altered, to report the fact to such authority as may be prescribed.

CHAPTER III

MISCELLANEOUS

18. *Power to enter upon, examine and clear obstruction on lands.*—For the purpose of any survey, enquiry or other proceedings under this Act, the Survey Officer or the Collector or any of the subordinates of such officers shall have power to enter upon, examine and measure any land under survey and to clear, by cutting down or removing any trees, jungle, fences, standing crops or other material obstructions, the boundaries or other lines, the clearance of which may be necessary for the purposes of the survey.

19. *Power to summon witnesses and require production of documents.*—Any Survey Officer generally or specially authorised in that behalf or the Collector or any officer to whom an appeal is preferred under any of the provisions of this Act may, for the purpose of rendering assistance in the survey of land, summon and enforce the attendance of any person who has an interest therein and may, for the purpose of any survey, enquiry or other proceedings under this Act, summon and enforce the attendance of any person for giving evidence and for production of documents; and the procedure prescribed in the Code of Civil Procedure, 1908, for summoning and enforcing the attendance of witnesses and for recording of evidence shall be followed as far as it can be made applicable.

20. *Reference to arbitration.*—(1) The Collector or the Survey Officer, as the case may be, may, with the consent of all the parties concerned, refer to arbitration any dispute as to a boundary.

(2) The decision of the Collector or the Survey Officer passed in accordance with such award shall be conclusive as between the parties to such arbitration and those claiming under them.

21. *Registered holder may recover expenses paid by him from owner.*—(1) In the absence of a contract to the contrary, the registered holder of any land under survey, who incurs any expenses or from whom any expenses are recovered under this Act in respct of such survey, shall, if he be not the owner thereof, acquire a charge on such land to the extent of the expenses so incurred or recovered from him with interest thereon at the rate of 6 per cent per annum.

(2) It shall be lawful for any person interested in any registered land under survey to pay the charges payable under this Act in respect of the survey of such land, though he be not the registered holder thereof, and all such sums, if paid by a tenant or lessee may be deducted from any rent then or afterwards due by him in respect of such land, and if paid by any other person interested in such land, shall be a charge on such land. Such sums shall bear interest at the rate of 6 per cent per annum.

(3) Where a person entitled under this section to a charge on any registered land is a co-owner of such land, such charge shall extend only to so much of the amount recovered from or expended or paid by him as is due in respect of the share of the other co-owners on such land with interest at the rate aforesaid.

22. *Power to make rules.*—(1) The Government may, after previous publication in the Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe for different localities the unit of survey, the sub-divisions thereof and the description of survey marks and provide for the maintenance, repair and renewal of such marks;

(b) provide for the collection and record of any information in respect of any land which has been or is about to be surveyed;

(c) define the classes of officers to be appointed to do duty under this Act and the powers to be exercised by such officers;

(d) prescribe and regulate the procedure to be followed by those officers in the conduct of proceedings under this Act;

(e) provide for the publication of all notifications issued under this Act and for the form, issue and service of all orders, communications and notices to be issued, communicated, given or served under this Act;

(f) prescribe the form of application under section 5 and the fees to be paid along with such application;

(g) regulate the furnishing of survey marks, labour and other matters necessary to surveys notified under this Act and the recovery of charges incidental thereto where they are recoverable;

(h) provide for the apportionment of all charges directed to be apportioned by this Act and for the determination of the cost of labour employed and of the survey marks used in any such survey;

(i) prescribe the fees payable for processes issued and copies granted under this Act; and

(j) prescribe the manner in which arbitrators are to be appointed and regulate the procedure to be followed by them.

(3) All rules made under this section shall be laid before the Legislative Assembly for a period of not less than fourteen days, as soon as possible after they are made, and shall be subject to such modifications as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

23. *Immunity for acts done or purporting to be done in good faith.*—No suit, prosecution or other legal proceedings shall lie against any officer or the Government for anything which is in good faith done or purporting to be done under the provisions of this Act or the rules made thereunder.

24. *Repeal and savings.*—(1) The Madras Survey and Boundaries Act, 1923 (Act VIII of 1923) as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), the Travancore Survey and Boundaries Act of 1094 (Act X of 1094) and the Cochin Survey Act, II of 1074, aro hereby repealed.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken, including any appointment or delegation made, order or direction issued or rule made under any of the aforesaid Acts shall be deemed to have been made or issued under the corresponding provision of this Act and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act;

(b) all suits and other proceedings under any of the aforesaid Acts pending, at the commencement of this Act, before any court or other authority, shall be continued and disposed of under that aforesaid Act, as if that aforesaid Act had continued in force and this Act had not been passed.

REGISTERED No. M. 7463

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EXTRAORDINARY

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GOVERNMENT OF KERALA

Law Department

NOTIFICATION

No. 11378H1|61|Law.

Dated, Trivandrum, the 22nd December, 1961.|
Pausa 1, 1883 (Saka)

The following Act of the Kerala State Legislature is hereby published for general information. The Bill as passed by the Legislative Assembly received the assent of the Governor on the 21st day of December, 1961.

By order of the Governor,
P. SANKARAN ELAYATH,
Law Secretary.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM. 1961.

ACT 40 OF 1961

THE GENERAL SALES TAX (SECOND AMENDMENT) ACT, 1961

An Act further to amend the General Sales Tax Act, 1125.

Preamble.—WHEREAS it is expedient further to amend the General Sales Tax Act, 1125, for the purposes hereinafter appearing;

BE it enacted in the Twelfth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the General Sales Tax (Second Amendment) Act, 1961.

(2) It shall be deemed to have come into force on the 30th day of May, 1950.

2. *Amendment of section 2.*—In section 2 of the General Sales Tax Act, 1125 (Act XI of 1125),—

(i) for clause (d), the following clause shall be substituted, namely:—

"(d) "dealer" means any person who carries on the business of buying or selling goods, and includes a person who sells goods produced by him by manufacture, agriculture or otherwise.

Explanation.—A co-operative society, a club, a firm or any association which sells goods to its members is a dealer within the meaning of this clause;";

(ii) in clause (j), Explanation (1) and Explanation (2) shall be renumbered as Explanation (2) and Explanation (3) respectively and, before Explanation (2) as so renumbered, the following Explanation shall be inserted, namely:—

"*Explanation (1).*—A transfer of the property in the following goods, namely, tea, coffee, rubber or cardamom, whether in the course of trade or business or otherwise, for cash or for deferred payment or other valuable consideration, by a person who produces the same, shall be deemed to be a sale for the purposes of this Act.".

3. *Repeal.*—The General Sales Tax (Second Amendment) Ordinance, 1961 (Ordinance No. 7 of 1961), is hereby repealed.

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